

Toms River Regional School District



Affirmative Action Overview

For further information, contact:

Megan I. Osborn, Director of Human Resources
Administrative Offices
(732) 818-8591

Wendy Rozwadowski Dravis
West Dover Elementary
(732) 505-5920

Kelly Kernasovic
Washington Street Elementary
(732) 505-5910

James Cleveland
Intermediate East
(732) 505-5775

Adrienne Gold
High School East
(732) 505-5677

Beverlee A. Tegeder
Intermediate South
(732) 505-3900

Brian Blake
Intermediate North
(732) 505-5800

Jason Julio
Intermediate East
(732) 505-5775

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I. FEDERAL TAX TITLE AND NEW JERSEY TITLE 6
AN OVERVIEW OF DISTRICT AFFIRMATIVE ACTION COMPLIANCE

In June 1972, Congress passed Title IX of the Education Amendments, a law that prohibits discrimination on the basis of sex for every educational institution that receives federal funding. The State of New Jersey, in 1975, passed Title 6, Equality in Educational Programs, which expanded on Title IX, thereby banning discrimination on the basis of sex, affectional or sexual orientation (real or perceived), race, color, creed, religion, ancestry, national origin, or social or economic status.

New Jersey Title 6 requires that all school districts submit the following to the Commissioner of Education:

1. Resolution of Equal Educational Opportunity.
2. Affirmative Action Plan for School and Classroom Practices, which deals with equal opportunity within the school setting (generally those areas involving the district's "Educational Opportunity").
3. Affirmative Action Plan for Employment/Contract Practices, which deals with equal opportunity and contractual vendor relationships.

The Toms River Regional School District began a self-evaluation process and development of Affirmative Action Employment/Contract Practices and School and Classroom Practices Plans during the 1975-76 school year to come into compliance with New Jersey Title 6. The district received approval for its Affirmative Action Plan on School and Classroom Practices in November 1977 and for its Affirmative Action Plan on Employment/Contract Practices in May 1977. Areas involving these plans are reviewed annually by the Superintendent's Office, the Affirmative Action Officers, and the district's Affirmative Action Committee.

During the 1984-85 school year all school districts were required to update the employment practices plan by the setting of minority employment goals through the 1988-89 school year. Local school district employment statistics for various job categories were compared with the Ocean County average and hiring goals within these categories were established. The district Affirmative Action Committee and the Affirmative Action Officer assisted the Superintendent's office in the development of these goals, which were initially approved at the February 12, 1985 Board of Education meeting. The District implementation plan and practices are renewed annually. The district remains in compliance under our current State approved CEP. This plan was most recently updated in March, 2016.

II. AFFIRMATIVE ACTION OFFICERS

The district's Affirmative Action Officers are Megan I. Osborn, Wendy Rozwadowski Dravis, Kelly Kernasovic, Brian Blake, Beverlee Tegeder, James Cleveland, Jason Julio and Leslie Port.

III. AFFIRMATIVE ACTION GRIEVANCE PROCEDURE

Any student, parent, teacher, administrator or member of the community who has a grievance involving affirmative action may contact any of the following agencies for information:

1. For information regarding any aspect of affirmative action including grievances call:

Megan I. Osborn

Director of Human Resources
(732) 818-8591

Wendy Rozwadowski Dravis

Affirmative Action Officer
(732) 505-5920

2. For information regarding New Jersey Title 6:

New Jersey Division on Civil Rights
26 Pennsylvania Avenue, 3rd Floor
Atlantic City, NJ 08401
(609) 441-3100

3. For information regarding Federal Title IX:

U.S. Office for Civil Rights
U.S. Department of Education
32 Old Slip, 26th Floor
New York, NY 10005-2500
(646) 428-3900

TOMS RIVER REGIONAL SCHOOL DISTRICT NONDISCRIMINATION GRIEVANCE PROCEDURE

The Toms River Regional Schools District is committed to having an environment free from all discrimination and harassment on the basis of disability. The District prohibits discrimination and harassment in the campus environment, including all academic, athletic, and school – sponsored activities. The district will investigate all formal and informal complaints of harassment.

Any student, parent, teacher, administrator, or member of the community who has a grievance under the terms of Federal Title IX, Section 504 of the Rehabilitation Act of 1973, New Jersey Title 6 and other applicable federal and state legislation may present the grievance for consideration. Formal complaints of discrimination and denial of services on the basis of race, color, creed, religion, sex, national origin, affectional or sexual, sexual orientation (real or perceived), social/economic status, age or handicap may be registered in the following manner.

PROCEDURE:

1. Any District staff who observes acts of harassment should intervene to address the harassment and promptly report the incident to his or her immediate supervisor. Additionally, if a complaint rises to level of grievance, forms are available on the district website. Affirmative Action Grievance form “A” is to be completed and forwarded to Megan Osborn, Director of Human Resources/Affirmative Action Officer describing the alleged discrimination and/or harassment on the basis of a protected category. The Affirmative Action Officer will hold a meeting within ten (10) school days to resolve the matter. If the matter cannot be resolved, or if an Affirmative Action Officer fails to act within the ten (10) days, the grieving person will proceed to the Superintendent.
2. The District will take all steps necessary to conduct an adequate, reliable, and impartial investigation of all complaints, as well as preventative steps to ensure the safety of the complainant and the larger school community during the investigation. During this investigation all parties will have the opportunity to identify witnesses and provide or identify evidence. The Superintendent will attempt to resolve the matter within twenty (20) school days. If the matter cannot be resolved at this level, or the Superintendent fails to act within the twenty (20) school days, the grievance may be taken to the Board of Education.
3. The investigatory report will be filed at the conclusion of the investigation with the Board Secretary. The document will contain:
 - a. The written reply of the Superintendent indicating his position in the matter.
 - b. A copy of the original document stating the alleged violation. The matter will be placed on the agenda and a decision reached by the Board at its next regularly scheduled meeting. The decision will be communicated to the grievant in writing within five (5) school days following the meeting.

The District will ensure the complainants are informed of their rights and have the opportunity to discuss available resources. Furthermore, the District will offer counseling and support services, as necessary and appropriate, to any person found to be subject to harassment, and where appropriate, counseling to the person(s) who committed the harassment.

At the conclusion of the investigation, written notice of the outcome will be given to the parties as well as the opportunity for the parties to appeal the findings. Any appeal will be conducted in an impartial manner by an impartial decision-maker.

The district will take necessary steps to prevent a recurrence of harassment and to correct its discriminatory effects.

Any retaliation against any individual who files an informal or formal complaint or participates in a complaint is prohibited and action will be taken if proven.

For complaints related to affirmative action or handicap conditions, you may contact a district Affirmative Action Officer.

Rev. Sept 2016

Re-Adopted January 7, 2014

IV. AFFIRMATIVE ACTION COMMITTEE

The district has held an active Affirmative Action Committee since 1976. The Committee's role has been and continues to be:

1. To assist in the development of the district's Comprehensive Equity Plan (CEP) as required by N.J. Title 6 (School and Classroom Practices Plan Employment/Contract Practices Plan);
2. To act in an advisory capacity to the office of the Superintendent of Schools and the Affirmative Action Officer in matters pertaining to the general area of affirmative action;
3. To act as a catalyst in increasing the knowledge of, and keeping the spirit of, affirmative action alive throughout the district.

Projects sponsored by the Affirmative Action Committee have included the annual observance of "Women in History Month", "Black History Month", "The Week of Respect", and the placement of an Affirmative Action Resource Packet in each of the district's school media centers and on the district's web-page (www.trschools.com). The Committee has also conducted affirmative action textbook evaluations at the request of the Curriculum Committee.

Affirmative Action Committee meetings are held each school year on a regular basis and also scheduled as needed. Anyone interested in becoming an active member of the Affirmative Action Committee may contact Megan I. Osborn, Wendy Rozwadowski Dravis, Kelly Kernasovic, Brian Blake, Beverlee Tegeder, James Cleveland, Jason Julio or Adrienne Gold, Affirmative Action Officers, or the Affirmative Action Committee/School Liaison Representatives in the schools.

The Affirmative Action Liaison Representatives of each school will foster communication between the individual schools and the district's Affirmative Action Committee. The Affirmative Action Committee's elementary, intermediate and high school level liaison representatives will be communicating with the school level representatives throughout the year. Hopefully, this will assist the schools in developing an ongoing in-service program to disseminate affirmative action related information throughout the district, thereby increasing an awareness of affirmative action related matters among the administration, staff and students.

2018-2019 Affirmative Action Committee Members

Assistant Superintendent – James Ricotta, Jr.

Director of Human Resources– Megan I. Osborn

District Affirmative Action Officer–Wendy Rozwadowski Dravis

District Affirmative Action Officer – Kelly Kernasovic

District Affirmative Action Officer–Brian Blake

District Affirmative Action Officer–Beverlee Tegeder

District Affirmative Action Officer– James Cleveland

District Affirmative Action Officer– Jason Julio

District Affirmative Action Officer – Adrienne Gold

AFFIRMATIVE ACTION LIAISONS – 2018-2019

HIGH SCHOOLS

High School East	Erin Anders*, Robert D’Ippolito
High School North	Kevin Raylman*, Jacquelyn Berry
High School South	Mark Sullivan*, Kristen Waldron

INTERMEDIATE SCHOOLS

Intermediate East	Bill Baxter*, Brian Huttemann
Intermediate North	Janine Lange*, Megan Okuniewicz
Intermediate South	Chip LaBarca*, Carol Isdanavage

ELEMENTARY SCHOOLS

Beachwood	James Klass*, Paul Brush, Jr.
Cedar Grove	Jeff Ryan*, Dyanne Sylvester
Citta	Mallory Kennedy*, Laurie Halloran
East Dover	Matthew Gray*, Christine Smith
Hooper Avenue	Christine Manna*, Ruane Navaez
North Dover	Colleen McGrath*, Barbara Lesniak
Pine Beach	Catherine Mellon *, Mary Colasurdo
Silver Bay	Courtney Norcross*, Karen Santinon
South Toms River	Nikole Mustica*, Bernadette Cannon
Walnut Street	Richard Fastnacht*, Carol Garczynski
Washington Street	Rachel Cicala*, Pam Stahl
West Dover	Wendy Dravis*, Megan Poskay

*Building Administrator

APPENDIX

September 1982

1
Summary of The Regulation
For Title IX
Education Amendments

Title IX of the Education Amendments of 1972 says: “No person...shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any education program or activity receiving federal financial assistance...”

With certain exceptions, the law bars sex discrimination in any academic, extracurricular, research, occupational training or other educational program (preschool to postgraduate) operated by an organization or agency which receives or benefits from federal financial aid.

Exempted from the provisions of Title IX are:

- Schools whose primary purpose is training for the U.S. military services or the Merchant Marine;
- Practices in schools controlled by religious organizations whenever compliance with Title IX would be contrary to their religious beliefs;
- The membership policies of the Girl and Boy Scouts, the YMCA and the YWCA, Campfire Girls and other single-sex, tax-exempt “youth service” organizations whose members are chiefly under age 19;
- University-based social fraternities and sororities;
- Activities relating to the American Legion’s Boys State, Boys Nation, Girls State and Girls Nation conferences;
- Father-son or mother-daughter activities, so long as opportunities for “reasonably comparable” activities are offered to students of both sexes;
- Scholarships or other aid offered by colleges and universities to participants in single-sex pageants which reward the combination of personal appearance, poise and talent.

Basically, the regulation for Title IX falls into six categories: general matters related to discrimination on the basis of sex, coverage, admissions, treatment of students once they are admitted, employment and procedures.

The following summary was adapted by PEER from a summary prepared by the Resource Center on Sex Roles In Education of the National Foundation for the Improvement of Education.

Subpart A
General Provisions-106.3-106.9

Each recipient of federal education aid must evaluate its current policies and practices to determine whether they comply with Title IX. Each recipient must then take whatever steps are necessary to end discrimination. Institutions must have completed the evaluations and steps to overcome the effects of bias by July 21, 1976. A description of these steps must be kept on file for three years after completion.

The regulation also requires that recipients adopt and publish grievance procedures to resolve complaints alleging discrimination prohibited by Title IX. Victims of discrimination are not required to use these procedures—they may file a complaint directly with the U.S. Department of Education (ED).

Recipients (for example, a school district, state education agency, or university) must appoint at least one employee to coordinate its efforts to comply with Title IX.

The regulation requires recipients to notify students, parents, employees, applicants, unions and professional organizations that they do not discriminate on the basis of sex. Students and employees must be told how to contact the employee coordinating Title IX compliance efforts.

By Oct. 21, 1975, recipients were required to issue this notice in the local press, student and alumni newspapers, and by a letter sent directly to students and employees. After that, all announcements, bulletins, catalogs and applications must contain a notice.

Subpart B Coverage-106.11-106.17

This section explains what is covered by Title IX and contains a number of exemptions. See page one.

Subpart C Admissions-106.21-106.23

The regulation bars sex discrimination in admissions to certain kinds of institutions; those of vocational, professional, graduate, and public coeducational undergraduate institutions. Admissions to private undergraduate institutions are exempt, including admissions to private, undergraduate, professional and vocational schools. ED will look at the admissions practices of each “administratively separate unit” separately.

Specifically, the regulation bars limitations (i.e. quotas) on the number or proportion of persons of either sex who may be admitted, preference for one sex, ranking applicants separately by sex, and any other form of differential treatment by sex.

The recipient may not use a test or other criterion for admission which adversely affects any person on the basis of sex unless the test or criterion is shown to predict successful completion of the educational program, and unbiased alternatives are not available. Also prohibited are rules concerning parental, family, or marital status of students, which make distinctions based on sex; discrimination because of pregnancy or related conditions; and asking an applicant’s marital status. Recipients can ask an applicant’s sex if the information is not used to discriminate.

The recipient must make comparable efforts to recruit members of each sex, except when special efforts to recruit members of one sex are needed to remedy the effects of past discrimination.

Subpart D Treatment of Students-106.31-106.42

General Coverage-106.31

Although some schools are exempt from coverage with regard to admissions, all schools must treat their admitted students without discrimination on the basis of sex. Briefly, the treatment of students section covers courses and extracurricular activities (including student organizations and competitive athletics), benefits, financial aid, facilities, housing, rules and regulations and research. A student may not be limited in the enjoyment of any right, privilege, advantage or opportunity based on sex.

The regulation forbids a recipient to aid or perpetuate sex discrimination by providing “significant assistance” to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit, or service to students or employees (with some exceptions, including the membership policies of social fraternities and sororities, Boy and Girl Scouts, YMCA and YWCA). (Significant assistance may include the provision of a facility or faculty sponsor.)

Housing and Facilities-106.32 and 106.33

Institutions may provide housing separately for men and women. However, housing for students of both sexes must be as a whole:

- Proportionate in quantity to the number of students of that sex that apply for housing, and
- Comparable in quality and cost to the student.

Institutions may not have different housing policies for students of each sex (for example, if a college allows men to live off campus, it must allow women, too).

Toilets, locker rooms and shower facilities may be separated on the basis of sex, but these facilities must be comparable for students of both sexes.

Courses and Other Educational Activities-106.34 and 106.35

Courses or other educational activities may not be provided separately on the basis of sex. An institution may not require or refuse participation in any course by any of its students on that basis. This includes physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

However, sex education is an exception; portions of elementary and secondary school classes dealing with human sexuality may be separated by sex.

In physical education classes, students may be separated by sex within coeducational classes when playing contact sports. Contact sports include wrestling, rugby, ice hockey, football, basketball, and any other sport “the purpose or major activity of which involves bodily contact.” Choruses may be based on vocal range or quality and may result in single-sex or predominately single-sex choruses.

Local school districts may not, on the basis of sex, exclude any person from:

- Any institution of vocational education;
- Any other school or educational unit, unless the school district offers that person courses, services and facilities which are comparable to those offered in such schools, following the same policies and admission criteria.

Counseling-106.36

A recipient may not discriminate on the basis of sex in counseling or guiding students. Whenever a school finds that a class has a disproportionate number of students of one sex, it must take whatever action is necessary to assure that sex bias in counseling or testing is not responsible.

A recipient may not use tests or other appraisal and counseling materials which use different materials for each sex or which permit or require different treatment for students of each sex. Exceptions can be made if different materials used for each sex cover the same occupations and they are essential to eliminate sex bias.

Schools must set up their own procedures to make certain that counseling and appraisal materials are not sex-biased. If a test does result in a substantially disproportionate number of students of one sex in a course of study or classification, the school must take action to ensure that bias in test, or its application, is not causing the disproportion.

Student Financial Aid-106.37 and 106.31 (c)

The regulation covers all forms of financial aid to students. Generally, a recipient may not, on the basis of sex:

- Provide different amounts or types of assistance, limit eligibility, apply different criteria, or otherwise discriminate;
- Assist through solicitation, listing, approval, provision of facilities, or other services any agency, organization or person which offers sex-biased student aid;
- Employ students in a way that discriminates against one sex, or provides services to any other organization which does so.

There are exceptions for athletic scholarships and single-sex scholarships established by will or trust.

Athletic scholarships. An institution which awards athletic scholarships must provide “reasonable opportunities” for both sexes, in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics. Separate athletic scholarships for each sex may be offered in connection with separate male/female teams to the extent consistent with both the section on scholarships and the section on athletics (86.41).

Scholarships for study abroad. The regulation exempts discriminatory student assistance for study abroad (such as Rhodes Scholarships), provided that a recipient who administers or helps to administer the scholarship awards makes available similar opportunities for the other sex. (86.31) (c).

Single sex scholarships. An institution may administer or assist in the administration of scholarships and other forms of student financial aid whenever a will, trust, or bequest specifies

that the aid can only go to one sex, as long as the overall effect of making sex-restricted awards is not discriminatory. To ensure this, institutions must:

- Select financial aid recipients on the basis of non-discriminatory criteria, not the availability of sex-restricted scholarships;
- Allocate sex-restricted awards to students already selected in such a fashion; and
- Ensure that no student is denied an award because of the lack of a sex-restricted scholarship.

Student Health and Insurance Benefits-106.39

Student medical, hospital, accident, or life insurance benefits, services, or plans may not discriminate on the basis of sex. This would not bar benefits or services which may be used by a different proportion of students of one sex than of the other, including family planning services. Any school which provides full coverage health services must provide gynecological care.

Marital or Parental Status-106.40

The regulation bars any rule concerning a student's actual or potential parental, family, or marital status which makes distinctions based on sex.

A school may not discriminate against any student in its educational program, including any class or extracurricular activity, because of the student's pregnancy, childbirth, false pregnancy, miscarriage, or termination of pregnancy, unless the student requests voluntarily to participate in a different program or activity.

If a school does not offer a voluntary, separate education program for pregnant students, the instructional program must be comparable to the regular instructional program. A school may ask a pregnant student to have her physician certify her ability to stay in the regular education program only if it requires physician's certification for students with other physical or emotional conditions.

Recipients must treat disabilities related to pregnancy the same way as any other temporary disability in any medical or hospital benefit, service, plan or policy which they offer to students. Pregnancy must be treated as justification for a leave of absence for as long as the student's physician considers medically necessary. Following this leave, the student must be reinstated to her original status.

Athletics-106.41

General coverage. The regulation says that no person may be subjected to discrimination based on sex in any scholastic, intercollegiate, club, or intramural athletics offered by a recipient of federal education aid.

Separate teams and contact sports. Separate teams for each sex are permissible in contact sports or where selection for teams is based on competitive skill. Contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and any other sport "the purpose or major activity of which involves bodily contact."

In non-contact sports, whenever a school has a team in a given sport for one sex only, and athletic opportunities for the other sex have been limited, members of both sexes must be allowed to try out for the team.

Equal opportunity. A school must provide equal athletic opportunity for both sexes. In determining whether athletic opportunities are equal, ED will consider whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes. The Department will also consider (among other factors): facilities, equipment, supplies, game and practice schedules, travel and per diem allowances, coaching (including assignment and compensation of coaches), academic tutoring, housing, dining facilities, and publicity.

Equal expenditures are not required, but ED “may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.”

Textbooks-106.42

The regulation does not require or abridge the use of particular textbooks or curriculum materials.

Subpart E

Employment-106.51-106.61

General Provisions-106.51-106.55

All employees in all institutions are covered, both full-time and part-time, except those in military schools, and those in religious schools to the extent compliance would be inconsistent with the controlling religious tenets.

In general, the regulation prohibits discrimination based on sex in employment, recruitment, and hiring, whether full-time or part-time, under any education program or activity which receives or benefits from federal financial aid. It also bars an institution from entering into union, employment agency, or fringe benefit agreements which subject individuals to discrimination.

An institution may not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant’s or employee’s employment opportunities or status because of sex.

The regulation prohibits sex discrimination in all aspects of employment, including employment criteria, advertising and recruitment, hiring and firing, promotion, tenure, pay, job assignments, training, leave, and fringe benefits.

If the institution is found to have practiced sex discrimination in recruitment or hiring, however, it must recruit the members of the sex against which it has discriminated to overcome the effects of past discrimination.

Fringe Benefits-106.56

Fringe benefit plans must provide either for equal periodic benefits for male and female employees or equal contributions for both sexes. Retirement plans may not establish different retirement ages for employees of each sex.

Marital Status and Pregnancy-106.57

An institution may not apply any employment policy concerning the potential marital, parental or family status of an employee or employment applicant which makes distinctions based on sex.

In addition, it may not have policies based on whether the employee or applicant is head of household or principal wage earner in the family.

An institution may not discriminate in employment on the basis of pregnancy or related conditions. A temporary disability resulting from these conditions must be treated as any other temporary disability for all job-related purposes, including leave, seniority, reinstatement and fringe benefits. If the employer has no temporary disability policy, pregnancy and related conditions must be considered a justification for leave without pay for a “reasonable” time period and the employee reinstated to her original or comparable status when she returns from leave.

Effect of State and Local Laws-106.58

The obligation to comply with this regulation is not precluded by any state or local laws.

Subpart F

Enforcement Process-106.71

In enforcing Title IX, the U.S. Department of Education will follow the procedures of Title VI of the Civil Rights Act of 1964. Under these procedures, ED must investigate promptly complaints submitted by individuals or groups. Letters charging that discrimination has occurred may be sent to the Assistant Secretary for Civil Rights, U.S. Department of Education, 330 C Street, SW, Rm. 5000, Washington, D.C. 20201 or to the Director of the Regional Office for Civil Rights responsible for enforcement in that state. ED also conducts compliance reviews-broad based investigations of school districts or universities initiated by ED.

The Title IX procedures require educational institutions to keep records demonstrating whether they are complying with the law’s requirements. Records must be available to ED upon request. Discrimination complaints must be filed with ED within 180 days of the discrimination. If after this investigation, ED finds that discrimination exists, it must try to achieve voluntary compliance by the institution. Failing this, ED may then begin administrative hearings which could lead to termination of federal financial assistance.

ED can also refer the matter to the U.S. Department of Justice for possible federal prosecution or to state or local authorities for action under state or local laws. Under the provisions for administrative hearings, recipient institutions (but not the complainant) are granted the right to counsel and the right to appeal.

* The full text of these procedures appears at 34 CFR 100.6-100.11 and 34 CFR Part 101. See also PL 94-482, 407.

Reprints of this Title IX summary are available from PEER. Single copies \$.75, multiple copies \$.50 each. Please add \$.50 for postage and handling. Mail check or money order to PEER, P.O. Box 28066, Washington, D.C. 20005.

Title VII Sexual Harassment Guidelines And Educational Employment

Introduction

On November 10, 1980 the Equal Opportunity Commission (EEOC) issued final interpretive guidelines on sexual harassment under Title VII of the Civil Rights Acts of 1964 which state that:

- Title VII prohibits sexual harassment of employees;
- Employers are responsible for the actions of their agents and supervisors; and
- Employers are responsible for the actions of all other employees if the employer knew or should have known about the sexual harassment.

What is Title VII?

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, national origin, and sex.

Who is covered by Title VII?

Title VII covers all employers who employ 15 or more employees. Title VII covers all educational institutions, and the guidelines cover all of their employees.

Who enforces the guidelines?

The Equal Employment Opportunity Commission, which issued the guidelines, is the enforcement agency for Title VII.

Why were the guidelines issued?

Sexual harassment in the workplace is a continuing and widespread problem. EEOC has stated, "Sexual harassment, like harassment on the basis of color, race, religion, or national origin has long been recognized by the EEOC as a violation of...Title VII of the Civil Rights Act of 1964.....However, despite the position taken by the Commission, sexual harassment continues to be especially widespread....Therefore, EEOC (amends) its guidelines on Discrimination because of Sex."

An example of the breach of this problem is shown by a 1975 study conducted by Working Woman's Institute in which 70 percent of the respondents reported that they had experienced sexual harassment on the job. In another study, conducted by Redbook Magazine, almost one half of employed women surveyed said that they—or a woman they knew—"has quit a position or been fired because of sexual harassment on the job."

Do the guidelines have the force of law?

Strictly speaking, no. The guidelines are advisory and courts take them into account. Moreover, the guidelines closely parallel already existing court decisions in which the courts have held that sexual harassment violates Title VII and that employers are responsible for the actions of their employees. Thus, the guidelines are consistent with current case law.

Do the guidelines prohibit personal relationships between employees?

No. The guidelines address themselves to unwelcome conduct and clearly distinguish sexual

harassment from a “particular action or incident (which is) a purely personal, social relationship without a discriminating employment effect.” In determining whether conduct constitutes sexual harassment, the commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.”

What is sexual harassment?

The guidelines define sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a nature which constitutes harassment when:

- Submission to the conduct is either explicitly or implicitly a term or condition of an individual’s employment;
- Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting that individual; and/or;
- Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.

Do the guidelines give specific examples of activities that constitute sexual harassment?

No, the guidelines offer a flexible and very broad definition of sexual harassment with no specific examples.

Specific examples, however, that may constitute sexual harassment under the guidelines are:

- Subtle pressure for sexual activity;
- Unnecessary patting or pinching;
- Constant brushing against another employee’s body;
- “Friendly” arms around the shoulder;
- “Accidental” brushes or touches;
- Deliberate assault or molestations;
- Demanding sexual favors accompanied by implied threats concerning an individual’s employment status;
- Demanding sexual favors accompanied by implied or overt promises or preferential treatment with regard to an individual’s employment status; and
- Explicit offers of money for sex.

Are sexual jokes, slurs and insults directed at members of one sex prohibited by the guidelines?

The answer to the question is unclear. Though the guidelines state that sexual harassment can be “physical” or “verbal”, the guidelines also state that the conduct must be of a sexual nature. Thus, it is unclear whether derogatory and degrading comments or jokes directed at members of one sex constitutes sexual harassment.

The Circuit Court of the District of Columbia, however, has found that activity need not have a sexual content in order to constitute sexual harassment. The activity need only to be directed to members of one sex.

“...Retention of her job was conditioned upon submission to sexual relations—an extraction which the supervisor would not have sought from any male.”

“...The vitiating factor thus stemmed not from the fact that what appellant’s supervisor demanded was sexual activity—which of itself is immaterial—but from the fact that he imposed upon her tenure in her then position a condition which he would not have fastened upon a male employee.” *Williams v. Saxbe*, 414 F. Supp. 654 (D.D.C. 1972)

In a later case the same court said:

“It was and is sufficient to allege a violation of Title VII to claim that the rule creating an artificial barrier to employment has been applied to one gender and not to the other.” *Barnes v. Costle*, 561F.2d 983 (1977).

The National Advisory Council on Women’s Educational Programs has urged that the guidelines be expanded or interpreted by EEOC so as to prohibit activity of a “gender charged” nature. In a letter to EEOC, the Council stated:

“An atmosphere charged with such anti-woman (or anti-man) bias is as potentially harmful to employees as is an atmosphere charged with racist sentiment, and constitutes “sexual” harassment in a very real manner.”

The “atmosphere” that the council refers to is created by “behavior (which) may include denigration of women (or men) through sexist humor, remarks, or other activities which create an intimidating, hostile, or offensive working climate, “but which do so without any suggestion that sexual activity take place between the principals.”

EEOC and, ultimately the courts will settle this question.

What must institutions do to comply with the guidelines?

The guidelines state that an employer should take all necessary steps to prevent sexual harassment such as:

- Affirmatively raising the subject;
- Expressing strong disapproval;
- Developing appropriate sanctions;
- Informing employees of their rights to raise the issue of sexual harassment under Title VII and developing methods to sensitize all concerned.

Is an employer responsible for the actions of its agents and supervisors?

Yes, the guidelines hold employers fully responsible for the actions of their agents and supervisors “regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence.”

Is an institution responsible for the actions of its employees?

Yes. The guidelines, however, impose a less strict standard by which to measure the employer’s responsibility if the harasser is simply an employee and not an agent or a supervisory employee. The employer is responsible for the actions of such employees only if the employer (or its agents or supervisory employees) “knows or should have known of the conduct and fails to take immediate and appropriate corrective action.”

In addition, an employer may also be responsible for the actions of non-employees who sexually harass employees in the workplace where the employer (or its agents or supervisory employees) “knows or should have known of the conduct and fails to take immediate and appropriate corrective action.”

Why should institutions be interested in prohibiting sexual harassment?

As a booklet published by AFSCME argues, “Probably the majority of offenders are supervisors, so sexual harassment should be considered a problem for management to resolve. Work environments in which sexual harassment is sanctioned are not the most productive, and personnel decisions may be made without regard to the job performance.” The booklet notes “sexual harassment undermines the integrity of the workplace,” and therefore, “it is good management practice to have a strong policy against sexual harassment.”

In addition, employers will also want to avoid charges of sexual harassment. In such cases, EEOC can ask for an award of front pay, back pay, reinstatement, promotion, or any other type of relief that will rectify the situation. Both EEOC and the courts have wide discretion in correcting situations where sexual harassment has or is occurring. If an employer refuses to settle a complaint through the conciliation process, EEOC can file suit and ask a federal judge for relief.

Do the guidelines prohibit sexual harassment of students?

The guidelines apply to employees. Students who are employees, however, are covered by the guidelines in the same manner as other employees.

Is there any other law that protects students from sexual harassment?

Title IX of the Education Amendments of 1972 “may prohibit sexual harassment of students.”

In the case of *Alexander, et al v. Yale* [631 Fed. 2d. 178 (2nd Cir. 1980)] a federal magistrate said in a preliminary hearing which permitted the case to go on trial, “...academic advancement conditioned upon a submission to sexual demands constitutes sex discrimination in education.” The case involves a claim by a former Yale College student that her political science professor had offered her an “A” for sex. (The case lost on appeal because of failure to prove that an improper advance was made or that the student was adversely affected as a consequence.)

The Office for Civil Rights (OCR) at the Department of Education is the primary enforcement agency for Title IX and the issued guidelines in regard to what constitutes sexual harassment in an educational environment under Title IX.